

## **STATE OF CALIFORNIA**

**DEPARTMENT OF INSURANCE  
45 Fremont Street, 24th Floor  
San Francisco, California 94105**

### **FINAL STATEMENT OF REASONS**

**Date: April 18, 2005**

**RH03032090**

**Notice File Number Z-04-0601-04**

### **REGULATIONS CONCERNING ORGANIZED AUTOMOBILE INSURANCE FRAUD GRANT FUNDING PROGRAM PURSUANT TO INSURANCE CODE SECTIONS 1872.8 and 1872.81**

#### **UPDATE OF INITIAL STATEMENT OF REASONS**

Pursuant to Insurance Code Sections 1872.8 and 1872.81, Insurance Commissioner John Garamendi proposes to amend section 2698.70 and 2698.71 of Article 4, Subchapter 9, of Chapter 5 Title 10 of the California Code of Regulations (CCR) regarding the assessment for the funding of organized automobile insurance fraud. The purpose of the proposed adoption is to implement, interpret and make specific the provisions of the California Insurance Code (CIC) sections 1872.8 and 1872.81 requiring the Commissioner to assess and distribute to California district attorney's certain funds assessed from automobile insurers to fund investigation and prosecution of automobile insurance fraud.

Public comment was accepted and a public hearing was held on this proposed regulation on July 26, 2004. After considering the public comment during the initial 45 day period, the Commissioner decided to make changes to the proposed regulations in response to the public comments. On August 9, 2004, these changes were published and posted for an additional 15 day public comment period which expired on August 25, 2004. After receiving additional public comment during the subsequent 15 day public comment period, the Commissioner decided to retain the existing language in the regulation that permitted prorating of the payment of the assessment in incremental payments. These changes were published and posted for an additional 15 day public comment period which expired on April 11, 2005. After a detailed review of the public comments, as indicated elsewhere in this rulemaking file, the Commissioner has determined that the regulation should be amended to improve the clarity of the regulation. Because the Initial Statement of Reasons, with some exceptions, still fully and accurately reflects the views of the Department of Insurance, the Commissioner incorporates by this reference the Initial Statement of Reasons.

## IDENTIFICATION OF STUDIES

The Commissioner has not relied on any technical, theoretical, or empirical study or report, or similar document, proposing the adoption of these regulations.

## FINAL UPDATED INFORMATIVE DIGEST

The only changes to the Informative Digest contained in the Notice of Proposed Action dated June 7, 2004 are that the language, in the proposed amendments to title 10, California Code of Regulations, section 2698.71, concerning pro-ration of the assessment has been retained. There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF JUNE 7, 2004 THROUGH JULY 26, 2004, THE 15 DAY NOTICE PERIOD CONCERNING PROPOSED CHANGES FROM AUGUST 9, 2004 THROUGH AUGUST 25, 2004, AND THE 15 DAY NOTICE PERIOD CONCERNING PROPOSED CHANGES FROM MARCH 25, 2005 THROUGH APRIL 11, 2005

*Summary and Response to Comments Re: Sections 2698.70 and 2698.71*

### **Comment No. 1:**

**Commentator:** Ronald Veltman, 21<sup>st</sup> Century Insurance Company

**Date of Comment:** July 26, 2004

**Type of Comment:** Written (email)

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comments and has changed part of the proposed regulations in response to the comment, but has left unchanged other portions of the proposed regulations in response to the comment.
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<p><b>(a) The Proposed Regulations Require Private Business to Perform Uncompensated Record Keeping Services on Behalf of the Government.</b></p> <p>The commentator requests that the Commissioner change the proposed regulations to have the fees assessed by the regulation collected by the Department of Motor Vehicles. The commentator states that the regulations continue to impose an unfair record keeping burden on insurers. In the absence of such an amendment to the proposed regulations, the commentator asks that the regulations should remain unchanged.</p>	<p><b>(a) The Proposed Regulations Require Private Business to Perform Uncompensated Record Keeping Services on Behalf of the Government.</b></p> <p>After considering the comment, the Commissioner has not accepted the proposed amendment to the proposed regulation. The proposed amendment offered by the commentator cannot be effected until the Legislature amends the enabling statute, Insurance Code section 1872.8. In addition, after further consideration of the commentator's request that the current regulations remain unchanged, the Commissioner rejects the request by the commentator.</p>
<p><b>(b) Pro-ration of the Assessment is the Only Way to Accurately Assess the Required Fee.</b></p> <p>The commentator asserts that the most accurate method to assess the fee required by the underlying statute is to continue to allow pro-ration of the assessment.</p>	<p><b>(b) Pro-ration of the Assessment is the Only Way to Accurately Assess the Required Fee.</b></p> <p>After considering the comment, the Commissioner has decided to change the proposed regulation to continue to allow pro-ration of the assessment.</p>

**Comment No. 2:**

**Commentator:** Michael A. Gunning, Personal Insurance Federation of California

**Date of Comment:** July 26 2004

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comments and has changed part of the proposed regulations in response to the comment, but has left unchanged other portions of the proposed regulations in</p>
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	response to the comment.
<p><b>(a) The Proposed Regulations Should Not Eliminate Pro-Ration of the Assessment. Instead, a Greater Emphasis Should Be Placed on Enforcing Compliance with the Existing Regulation and on Shifting the Collection of the Assessment from Insured Drivers to Owners of all Registered Vehicles.</b></p> <p>The commentator asserts that the pro-ration of the assessment imposed by title 10, California Code of Regulations, section 2698.62 results in the most equitable collection of the assessment. Otherwise, consumers may be charged for full year assessments when their vehicle was not insured for a full year with any particular insurer. In addition, the commentator states that increasing compliance would be a more effective means of increasing collection of the assessment rather than changing the method of calculation and collection. The commentator also states that the assessment should be collected from owners of all registered vehicles rather than just from owners of all insured vehicles.</p>	<p><b>(a) The Proposed Regulations Should Not Eliminate Pro-Ration of the Assessment. Instead, a Greater Emphasis Should Be Placed on Enforcing Compliance with the Existing Regulation and on Shifting the Collection of the Assessment from Insured Drivers to Owners of all Registered Vehicles.</b></p> <p>After consideration of the comment and additional comments by the insurance industry, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers. The Commissioner has considered and rejected the comment concerning increasing enforcement of compliance with the existing regulations as being outside the scope of the regulatory process. In addition, the Commissioner has considered and rejected the comment that the assessment should be collected from owners of all registered vehicles rather than from owners of all insured vehicles. The comment implies that the assessment would be collected by the Department of Motor Vehicles. Such a change could not be implemented without the Legislature amending the enabling statute, Insurance Code section 1872.8.</p>

**Comment No. 3:**

**Commentator:** Samuel Sorich, Association of California Insurance Companies

**Date of Comment:** July 26, 2004

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comments and has changed part of the proposed regulations in response to the
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	comment, but has left unchanged other portions of the proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Creates a Method of Calculating and Collecting the Assessment that is Not Authorized by Statute.</b></p> <p>The commentator asserts that the proposed regulations would create a method of calculating and collecting the assessment that is not authorized by statute. In particular, the commentator states that the proposed regulations would create a situation where the full assessment would be collected by an insurer even though the insurer may be insuring a vehicle for a fraction of a twelve month period. Further, the commentator states there is no evidence that justifies collecting the full amount of the assessment every time a vehicle owner changed insurers during the course of a year. The commentator suggests that the legislative history of the enabling statutes for these regulations indicates that the Legislature did not intend for the assessment to be collected multiple times on a vehicle. As a result, prohibiting pro-ration of the assessment would be contrary to statute and the Legislature's intent.</p>	<p><b>(a) The Proposed Regulation Creates a Method of Calculating and Collecting the Assessment that is Not Authorized by Statute.</b></p> <p>After considering this comment, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers.</p>
<p><b>(b) The Proposed Regulations Are Unfair to Nonstandard and Commercial Insurers.</b></p> <p>The commentator contends that the proposed regulations would be unfair to nonstandard insurers because their insureds tend to allow their insurance policies to lapse during the course of a year. As a result, the commentator believes that the proposed regulations would result in higher costs and fees for nonstandard insurers. Similarly, the commentator also contends that the proposed regulations would be unfair to commercial insurers. Because of the</p>	<p><b>(b) The Proposed Regulations Are Unfair to Nonstandard and Commercial Insurers.</b></p> <p>The Commissioner has considered and rejected the comment because he has found no evidence to suggest that the proposed regulations would be unfair to nonstandard and commercial insurers. However, in response to other comments, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers.</p>

<p>nature of commercial insurance, vehicles are often insured for only a very brief period of time, sometimes as short as a few days. As a result, the commentator argues that it is unfair for commercial insurers to be required to pay the full assessment for covering a vehicle for a few days while another insurer would pay the same amount for a full year's coverage of a vehicle.</p>	
<p><b>(c) Pro-Ration of the Assessment Should Not be Prohibited.</b></p> <p>The commentator asserts that the proposed regulations' prohibition of the pro-ration of the assessment is not necessary. The commentator acknowledges that the proposed regulations, in part, are in response to a Bureau of State Audits report on the Automobile Insurance Fraud program at the Department of Insurance. The commentator states that instead of eliminating the pro-ration of the assessment, the focus should be on creating a "specific and uniform method for identifying the number of vehicles" covered by an automobile insurance policy.</p>	<p><b>(c) Pro-Ration of the Assessment Should Not be Prohibited.</b></p> <p>After considering this comment, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers.</p>
<p><b>(d) The Assessment Should be Collected at the Time of Vehicle Registration.</b></p> <p>The commentator suggests that the wisdom of collecting the assessment through the insurance mechanism needs to be reexamined. The commentator states that collecting the assessment at the time of vehicle registration would "seem to be a simpler, more equitable approach."</p>	<p><b>(d) The Assessment Should be Collected at the Time of Vehicle Registration.</b></p> <p>The Commissioner has considered and rejected the comment because the comment implies that the assessment would be collected by the Department of Motor Vehicles. Such a change could not be implemented without the Legislature amending the enabling statute, Insurance Code section 1872.8.</p>
<p><b>(e) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial Vehicles.</b></p> <p>The commentator asserts that the proposed regulations' requirement for insurers to maintain</p>	<p><b>(e) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial Vehicles.</b></p> <p>The Commissioner has considered and rejected the comment because the proposed regulations,</p>

<p>a file including the vehicle identification number of every insured vehicle would be impractical for commercial insurers. The commentator states that it would cost insurers more to administer the assessment under the proposed regulations than the amount of the actual assessment. Further, the commentator argues that commercial insurers have no business purpose in collecting the vehicle identification number information on the vehicles that they are insuring.</p>	<p>in title 10, Code of California Regulations, section 2692.62(c) permit insurers to devise an alternative method of determining the number of vehicles if the use of vehicle identification numbers is impractical. Under the proposed regulations, such an alternative method must be approved by the Commissioner.</p>
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**Comment No. 4:**

**Commentator:** Samuel Sorich, Association of California Insurance Companies

**Date of Comment:** July 26, 2004

**Type of Comment:** Oral Testimony

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comments and has changed part of the proposed regulations in response to the comment, but has left unchanged other portions of the proposed regulations in response to the comment.</p>
<p><b>(a) The Proposed Regulations Are Unfair to Nonstandard and Commercial Insurers.</b></p> <p>The commentator contends that the proposed regulations would be unfair to nonstandard insurers because their insureds tend to allow their insurance policies to lapse during the course of a year. As a result, the commentator believes that the proposed regulations would result in higher costs and fees for nonstandard insurers. Similarly, the commentator also contends that the proposed regulations would be unfair to commercial insurers. Because of the nature of commercial insurance, vehicles are often insured for only a very brief period of time, sometimes as short as a few days. As a result, the commentator argues that it is unfair</p>	<p><b>(a) The Proposed Regulations Are Unfair to Nonstandard and Commercial Insurers.</b></p> <p>The Commissioner has considered and rejected the comment because he has found no evidence to suggest that the proposed regulations would be unfair to nonstandard and commercial insurers. However, in response to other comments, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers.</p>

for commercial insurers to be required to pay the full assessment for covering a vehicle for a few days while another insurer would pay the same amount for a full year's coverage of a vehicle.	
<p><b>(b) Pro-Ration of the Assessment Should Not be Prohibited.</b></p> <p>The commentator asserts that the proposed regulations' prohibition of the pro-ration of the assessment is not necessary. The commentator acknowledges that the proposed regulations, in part, are in response to a Bureau of State Audits report on the Automobile Insurance Fraud program at the Department of Insurance. The commentator states that instead of eliminating the pro-ration of the assessment, the focus should be on creating a "specific and uniform method for identifying the number of vehicles" covered by an automobile insurance policy.</p>	<p><b>(b) Pro-Ration of the Assessment Should Not be Prohibited.</b></p> <p>After considering this comment, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers.</p>
<p><b>(c) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial Vehicles.</b></p> <p>The commentator asserts that the proposed regulations' requirement for insurers to maintain a file including the vehicle identification number of every insured vehicle would be impractical for commercial insurers. The commentator states that it would cost insurers more to administer the assessment under the proposed regulations than the amount of the actual assessment. Further, the commentator argues that commercial insurers have no business purpose in collecting the vehicle identification number information on the vehicles that they are insuring.</p>	<p><b>(c) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial Vehicles.</b></p> <p>The Commissioner has considered and rejected the comment because the proposed regulations, in title 10, Code of California Regulations, section 2692.62(c) permit insurers to devise an alternative method of determining the number of vehicles if the use of vehicle identification numbers is impractical. Under the proposed regulations, such an alternative method must be approved by the Commissioner.</p>
<p><b>(d) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial</b></p>	<p><b>(d) Any New Verification Method Must Take Into Account the Special Business Practices of Insurers of Commercial</b></p>



<p><b>Vehicles.</b></p> <p>The commentator asserts that the proposed regulations' requirement for insurers to maintain a file including the vehicle identification number of every insured vehicle would be impractical for commercial insurers. The commentator states that it would cost insurers more to administer the assessment under the proposed regulations than the amount of the actual assessment. Further, the commentator argues that commercial insurers have no business purpose in collecting the vehicle identification number information on the vehicles that they are insuring.</p>	<p><b>Vehicles.</b></p> <p>The Commissioner has considered and rejected the comment because the proposed regulation in title 10, California Code of Regulations, section 2692.62(c) gives insurers the opportunity to devise an alternative system of tracking the vehicles that they insure if using vehicle identification numbers is not practicable. Such an alternative system would have to be approved by the Commissioner.</p>
<p><b>(e) The Assessment Should be Collected at the Time of Vehicle Registration.</b></p> <p>The commentator suggests that the wisdom of collecting the assessment through the insurance mechanism needs to be reexamined. The commentator states that collecting the assessment at the time of vehicle registration would "seem to be a simpler, more equitable approach."</p>	<p><b>(e) The Assessment Should be Collected at the Time of Vehicle Registration.</b></p> <p>The Commissioner has considered and rejected the comment because the comment implies that the assessment would be collected by the Department of Motor Vehicles. Such a change could not be implemented without the Legislature amending the enabling statute, Insurance Code section 1872.8.</p>

**Comment No. 5:**

**Commentator:** Michael A. Gunning, Personal Insurance Federation of California

**Date of Comment:** July 26, 2004

**Type of Comment:** Oral Testimony

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comments and has changed part of the proposed regulations in response to the comment, but has left unchanged other portions of the proposed regulations in response to the comment.</p>
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<p><b>(a) The Proposed Regulations Should Not Eliminate Pro-Ration of the Assessment. Instead, a Greater Emphasis Should Be Placed on Enforcing Compliance with the Existing Regulation and on Shifting the Collection of the Assessment from Insured Drivers to Owners of all Registered Vehicles.</b></p> <p>The commentator asserts that the pro-ration of the assessment imposed by title 10, California Code of Regulations, section 2698.62 results in the most equitable collection of the assessment. Otherwise, consumers may be charged for full year assessments when their vehicle was not insured for a full year with any particular insurer. In addition, the commentator states that increasing compliance would be a more effective means of increasing collection of the assessment rather than changing the method of calculation and collection. The commentator also states that the assessment should be collected from owners of all registered vehicles rather than just from owners of all insured vehicles.</p>	<p><b>(a) The Proposed Regulations Should Not Eliminate Pro-Ration of the Assessment. Instead, a Greater Emphasis Should Be Placed on Enforcing Compliance with the Existing Regulation and on Shifting the Collection of the Assessment from Insured Drivers to Owners of all Registered Vehicles.</b></p> <p>After consideration of the comment and additional comments by the insurance industry, the Commissioner has decided to delete the language in the proposed regulations that would have prohibited the pro-ration of the assessment by insurers. The Commissioner has considered and rejected the comment concerning increasing enforcement of compliance with the existing regulations as being outside the scope of the regulatory process. In addition, the Commissioner has considered and rejected the comment that the assessment should be collected from owners of all registered vehicles rather than from owners of all insured vehicles. The comment implies that the assessment would be collected by the Department of Motor Vehicles. Such a change could not be implemented without the Legislature amending the enabling statute, Insurance Code section 1872.8.</p>
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**Comment No. 6:**

**Commentator:** Cathy Schwamberger, State Farm Insurance

**Date of Comment:** July 26, 2004

**Type of Comment:** Oral Testimony

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has changed part of the proposed regulations in response to the comment.</p>
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<p><b>(a) Use of the Dates of Coverage for the Automobile Assessment File Required by the Proposed Regulation Creates an Administrative Burden for Insurers.</b></p> <p>The commentator requests that the portion of the proposed regulation requiring insurers to maintain an Automobile Assessment File be changed. As originally proposed, the Automobile Assessment File would identify a covered vehicle by vehicle identification number, policy number and dates of coverage. The commentator notes that many insurers issue policies of relatively short durations. As a result, the dates of coverage may change frequently on an insured vehicle for a variety of reasons. The commentator questions whether information concerning dates of coverage was an absolutely necessary piece of information for the Automobile Assessment File. If not, the commentator asks that the requirement be removed from the proposed regulation.</p>	<p><b>(a) Use of the Dates of Coverage for the Automobile Assessment File Required by the Proposed Regulation Creates an Administrative Burden for Insurers.</b></p> <p>After considering this comment, the Commissioner has decided to change the language in title 10, California Code of Regulations, section 2692.62(d). Instead of requiring the maintenance of information concerning dates of coverage, the new language will require tracking transaction dates instead.</p>
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**Comment No. 7:**

**Commentator:** Cathy Schwamberger, State Farm Insurance

**Date of Comment:** July 26, 2004

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has changed part of the proposed regulations in response to the comment.</p>
<p><b>(b) Use of the Dates of Coverage for the Automobile Assessment File Required by the Proposed Regulation Creates an Administrative Burden for Insurers.</b></p> <p>The commentator requests that the portion of the</p>	<p><b>(a) Use of the Dates of Coverage for the Automobile Assessment File Required by the Proposed Regulation Creates an Administrative Burden for Insurers.</b></p> <p>After considering this comment, the</p>

<p>proposed regulation requiring insurers to maintain an Automobile Assessment File be changed. As originally proposed, the Automobile Assessment File would identify a covered vehicle by vehicle identification number, policy number and dates of coverage. The commentator notes that many insurers issue policies of relatively short durations. As a result, the dates of coverage may change frequently on an insured vehicle for a variety of reasons. The commentator questions whether information concerning dates of coverage was an absolutely necessary piece of information for the Automobile Assessment File. If not, the commentator asks that the requirement be removed from the proposed regulation.</p>	<p>Commissioner has decided to change the language in title 10, California Code of Regulations, section 2692.62(d). Instead of requiring the maintenance of information concerning dates of coverage, the new language will require tracking transaction dates instead.</p>
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**Comment No. 8:**

**Commentator:** Cathy Schwamberger, State Farm Insurance

**Date of Comment:** August 31, 2004

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has changed part of the proposed regulations in response to the comment.</p>
<p><b>(a) It is Unfair for the Assessment to be Due Whenever a Policyholder Changes the Vehicle to be Covered by a Policy.</b></p> <p>The commentator notes that after public comment, the proposed regulation was changed to require payment of the assessment whenever a policyholder replaced a vehicle that had previously been covered by an automobile insurance policy. The commentator notes that 11% of her company's policies had a vehicle change in 2003. The commentator states that the new language will result in a substantial</p>	<p><b>(a) It is Unfair for the Assessment to be Due Whenever a Policyholder Changes the Vehicle to be Covered by a Policy.</b></p> <p>After considering the comment, the Commissioner rejects the comment and has elected not to change the proposed regulation. The enabling statute for these regulations, Insurance Code section 1872.8 states that the assessment shall be imposed against each vehicle insured under an insurance policy issued in this state. There is no exclusion mentioned in the statute concerning</p>

<p>increase of the amount of her company's annual assessment. The commentator was also concerned about the change in the proposed regulations which make the assessment applicable once to the "same vehicle, by the same owner, insured by the same insurer". The commentator was concerned that this could result in an assessment being imposed twice against an automobile that had been sold by one insured to another insured of the same insurer.</p>	<p>replacement vehicles. Concerning the other portion of the comment relating to multiple assessments arising from a sale of a vehicle from one insured to another insured who all used the same insurer, the statute does not exempt such a transaction from the assessment.</p>
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## **ALTERNATIVES**

The Commissioner has determined that, pursuant to Government Code section 11346.9(a) (4), no alternative considered by the Department would be more effective in carrying out the purpose for which the regulations are proposed. The Commissioner has also determined that no other alternative considered by the Department would be as effective and less burdensome to affected private persons than the adopted regulation.

## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.